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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 ISABEL RUGGERI, an individual,)
11)
12 Plaintiff,)

13 v.)

14 SIOUX CHIEF MFG. CO., INC., a)
15 corporation, SUPPLYHOUSE.COM, a)
16 corporation, and DOES 1 through 100,)
17 inclusive,)
18 Defendants.)

CASE NO. BC572804

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Rolf M. Treu

Dept.: 58

Compl. Filed: February 18, 2015

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Isabel Ruggeri
4 (“Plaintiff”) and Defendant, Sioux Chief Mfg. Co., Inc. (“Defendant”). Plaintiff and Defendant
5 shall hereinafter collectively be referred to as the “Parties.”

6 Plaintiff is a citizen of the state of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.

10 Defendant employs ten (10) or more employees and is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant manufactured, distributed, supplied, and/or sold brass
15 water hammer arresters known as “Mini-Resters” with the following item numbers: 660-2; 660-
16 2B; 660-C; 660-CB; 660-T; 660-TA2B; 660-TB; 660-TC0; 660-TC08; 660-TC1; 660-TC1B;
17 660-TC2B; 660-TR; 660-TR1; 660-TR1B; 660-TR2; 660-TR2B; 660-TRB; 660-TW2; 660-
18 TX1B; 660-TX2; 660-TX2B; 660-G2; 660-G2B; 660-GC; 660-GCB; 660-GT; 660-GTB; 660-
19 GTC0; 660-GTC0B; 660-GTC1; 660-GTC1B; 660-GTR; 660-GTR0; 660-GTR0B; 660-GTR1;
20 660-GTRB; 660-GTW2B; 660-GTX2; 660-GTX2B; 660-GVPX2B; 660-WG2B; 660-LVS; 660-
21 S; 660-SB; 660-T22; 660-TS; 660-TS8; 660-TS88; 660-TSX; 660-TSX88; 660-V2B; 660-V82;
22 660-V82B; 660-X2B; 660-3SB; 660-H; 660-HB; 660-TK; 660-TKB (collectively hereinafter, the
23 “Products”) in the State of California causing users in California to be exposed to hazardous
24 levels of lead and lead compounds without providing “clear and reasonable warnings”, in
25 violation of Proposition 65. Lead and lead compounds (collectively, “Listed Chemicals”) are
26 potentially subject to Proposition 65 warning requirements because they are listed as known to
27 cause cancer, birth defects and other reproductive harm.

28 On December 8, 2014, a sixty-day notice of violation (“60-Day Notice”), along with a

1 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
2 agencies regarding the alleged violation of Proposition 65 with respect to the Products.

3 On February 18, 2015, Plaintiff filed the instant action in the Superior Court for the County of
4 Los Angeles, alleging violation of Proposition 65 with respect to the Products.

5 **1.3 No Admissions**

6 Defendant denies all allegations in paragraph 1.2, above, in Plaintiff's 60-Day Notice and
7 Complaint, and maintains that at all times the Products have been, and are, in compliance with
8 all laws, and that Defendant has not violated Proposition 65. This Consent Judgment shall not be
9 construed as an admission of liability by Defendant, but to the contrary, as a compromise of
10 claims that are expressly contested and denied. However, nothing in this section shall affect the
11 Parties' obligations, duties, and responsibilities under this Consent Judgment.

12 **1.4 Jurisdiction And Venue**

13 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court
14 has jurisdiction over Defendant as to the allegations of the Complaint, that venue is proper in Los
15 Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of this
16 Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and
17 Proposition 65.

18 **1.5 Effective Date**

19 The "Effective Date" shall be five (5) days after Plaintiff's counsel provides written
20 notice to Defendant's counsel that this Consent Judgment has been approved and entered by the
21 Court.

22 **2. INJUNCTIVE RELIEF AND REFORMULATION**

23 **2.1 Reformulation**

24 As of the Effective Date, Defendant shall not sell or offer for sale in California any of the
25 Products that contain more than 100 parts per million (0.01%) of lead when analyzed pursuant to
26 Environmental Protection Agency testing methodologies 3050B or equivalent, without providing
27 "clear and reasonable warnings" as described in section 2.2 below.

28 **2.2 Clear And Reasonable Warnings**

1 For Products that are manufactured and/or supplied by Defendant and sold or offered for
2 sale in California, each unit that does not meet the Reformulation standard in section 2.1 shall be
3 accompanied by the following specific warning with the capitalized and emboldened wording:

4 **“WARNING:** This product contains a chemical known to the State of California
5 to cause [cancer,] birth defects and other reproductive harm.”

6 Defendant shall use the bracketed “cancer” in the warning only if the daily exposure to
7 lead through the reasonably anticipated use of the Product exceeds 15 micrograms of lead. Each
8 unit shall carry said warning directly on each unit or its label or package, near the product name,
9 price, or UPC code, in a manner reasonably calculated to be seen by the ordinary consumer.

10 **3. PAYMENTS**

11 **3.1 Civil Penalty Pursuant To Proposition 65**

12 In settlement of all causes of action in Plaintiff’s Complaint, Defendant shall pay a total
13 civil penalty of five thousand dollars (\$5,000.00) to be apportioned in accordance with *Health*
14 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750.00) paid to State of California
15 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
16 (\$1,250.00) paid to Plaintiff.

17 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
18 made payable to “Law Offices of Lucas T. Novak in Trust for OEHHA” in the amount of
19 \$3,750.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak in
20 Trust for Isabel Ruggeri” in the amount of \$1,250.00. Defendant shall remit the payments within
21 five (5) business days of the Effective Date, to:

22 Lucas T. Novak, Esq.
23 LAW OFFICES OF LUCAS T. NOVAK
24 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

25 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

26 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
27 incurred in prosecuting the instant action, for all work performed through execution of this
28 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or

1 money order made payable to “Law Offices of Lucas T. Novak” in the amount of sixteen
2 thousand five hundred dollars (\$16,500.00). Defendant shall remit the payment within five (5)
3 business days of the Effective Date, to:

4 Lucas T. Novak, Esq.
5 LAW OFFICES OF LUCAS T. NOVAK
6 8335 W Sunset Blvd., Suite 217
7 Los Angeles, CA 90069

7 **4. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

8 **4.1** This Consent Judgment is a full, final, and binding agreement between Plaintiff,
9 on behalf of herself and in the public interest, and Defendant, of any alleged violation of
10 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
11 exposure to lead from the handling, use, or consumption of the Products and fully resolves all
12 claims that have been or could have been asserted in this action up to and including the Effective
13 Date for failure to provide Proposition 65 warnings for the Products. Plaintiff on behalf of herself
14 and in the public interest, hereby discharges Defendant, and its respective officers, directors,
15 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
16 franchisees, licensees, customers, manufacturers, distributors, wholesalers, retailers, and all other
17 upstream and downstream entities in the distribution chain of any Product, and the predecessors,
18 successors and assigns of any of them (collectively, “Released Parties”), from any and all claims,
19 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
20 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising
21 from the failure to provide Proposition 65 warnings on the Products regarding lead, or any other
22 claims alleged in this action, up through and including the Effective Date.

23 **4.2** Plaintiff on her own behalf only, on one hand, and Defendant on its own behalf
24 and on behalf of the Released Parties, further waive and release any and all claims they may have
25 against each other for all actions or statements made or undertaken in the course of seeking or
26 opposing enforcement of Proposition 65 in connection with the 60-Day Notice or Complaint up
27 through and including the Effective Date, provided, however, that nothing in Section 4 shall
28 affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

1 **4.3** It is possible that other claims not known to the Parties arising out of the facts
2 alleged in the 60-Day Notice or the Complaint and relating to the Products will develop or be
3 discovered. Plaintiff, on behalf of herself only, on one hand, and Defendant, on the other hand,
4 acknowledge that this Consent Judgment is expressly intended to cover and include all such
5 claims up through the Effective Date, including all rights of action therefore. Plaintiff and
6 Defendant acknowledge that the claims released in sections 4.1 and 4.2 above may include
7 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
8 known claims. California Civil Code section 1542 reads as follows:

9 “A general release does not extend to claims which the creditor does not know or
10 suspect to exist in his or her favor at the time of executing the release, which if
11 known by him or her must have materially affected his or her settlement with the
12 debtor.”

13 Plaintiff on behalf of herself only, on the one hand, and Defendant, on the other hand,
14 acknowledge and understand the significance and consequences of this specific waiver of
15 California Civil Code section 1542.

16 **4.4** Compliance with the terms of this Consent Judgment shall be deemed to
17 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in
18 the Products as set forth in the 60-Day Notice and the Complaint.

19 **5. COURT APPROVAL**

20 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
21 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
22 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
23 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
24 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
25 support the entry of this agreement in a timely manner, including cooperating on drafting and
26 filing any papers in support of the required motion for judicial approval.

27 **6. SEVERABILITY**

28 Subsequent to Court approval of this Consent Judgment, should any part or provision of

1 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
2 unenforceable, the remaining portions and provisions shall continue in full force and effect.

3 **7. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **8. NOTICES**

7 All correspondence and notices required to be provided under this Consent Judgment
8 shall be in writing and delivered personally or sent by first class or certified mail addressed as
9 follows:
10

11 TO DEFENDANT: 12 Kenneth E. Chyten 13 Law Office of Kenneth E. Chyten 14 300 East Esplanade Drive, Suite 900 Oxnard, CA 93036	11 TO PLAINTIFF: 12 Lucas T. Novak, Esq. 13 Law Offices of Lucas T. Novak 14 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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16 **9. INTEGRATION**

17 This Consent Judgment constitutes the entire agreement between the parties with respect
18 to the subject matter hereof and may not be amended or modified except in writing.

19 **10. COUNTERPARTS**

20 This Consent Judgment may be executed in counterparts, each of which shall be deemed
21 an original, and all of which, when taken together, shall constitute the same document. Execution
22 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
23 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
24 Judgment shall have the same force and effect as the originals.

25 **11. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
28 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this

1 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
2 interfere with the execution or performance of this Consent Judgment by said party.

3
4 **AGREED TO:**

5 Date:

July 28, 2015

6
7 Printed Name:

MICHAEL E. MEAGHER

8
9 By:

Michael E. Meagher

10 Authorized Officer of Defendant, Sioux Chief Mfg. Co., Inc.

11
12 **AGREED TO:**

13 Date:

14
15 By:

16 Plaintiff, Isabel Ruggeri

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____

JUDGE OF THE SUPERIOR COURT

1 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
2 interfere with the execution or performance of this Consent Judgment by said party.

3
4 **AGREED TO:**

5 Date: July 28, 2015

6
7 Printed Name: MICHAEL E. MEAGHER

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9 By: Michael E. Meagher
10 Authorized Officer of Defendant, Sioux Chief Mfg. Co., Inc.

11
12 **AGREED TO:**

13 Date: July 30, 2015

14
15 By: Isabel Ruggieri
16 Plaintiff, Isabel Ruggieri

17
18 **IT IS SO ORDERED.**

19
20 Dated: _____

21 JUDGE OF THE SUPERIOR COURT
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